since June 1, 1980, after the coming into force of the Rules of the High Court 1980, leave would indeed be required under Order 53 rule 1(1).

I am however inclined to the view that Chan has not succeeded in bringing his case under section 44 of the Specific Relief Act 1950. His relationship with the Telecommunication Department is merely contractual, under an agreement made in accordance with rule 11 of the Telephone Regulations 1956 (L.N. 178 dated June 12, 1956). Apart from anything else he would, if what he alleges is true, have his remedy in an action for breach of contract, and would therefore not be able to assert that he has "no other specific and adequate legal remedy", a condition necessary to entitle a person to apply for relief under section 44(1) of the Act.

I would with respect adopt what Sharma J. said, on somewhat similar facts in *Koon Hoi Chow* v. *Pretam Singh*,[1] that

"any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant, cannot be enforced by machinery of a writ of mandamus or an order under section 44 of the Specific Relief Ordinance. Mandamus does not lie to enforce a civil liability arising out of a breach of contract to enforce rights based on contract. A civil suit for damages or for the enforcement of the civil liability may be the only proper remedy in such a case."

The application in the originating motion of March 9, 1979 is therefore dismissed with costs.

Order accordingly.

Solicitors: *Mah-Kok & Din.*

BRUNEI REPORT

MANHATTAN BORNEO FINANCE & TRUST CORPN. LTD. v. IVAN LEONG ON KHONG

[O.C.J. (Silke J.) September 23, 1980]

[Brunei — Civil Suit No. 125 of 1980]

Practice and Procedure — Summary judgment — Whether "chattel" applies to share certificate — Meaning of "possession" — Brunei High Court Civil Procedure Rules 1970, O. 3 r. 5(3) & O. 14 r. 1.

The points at issue in this case were whether or not the word "chattel" in Order 3 rule 5(3) of the Brunei High Court Civil Procedure Rules 1970 could apply to a share certificate and whether or not "possession" meant both physical and legal possession.

Held: (1) a chattel is property, the share is property and therefore a chattel;

(2) possession in the Order included legal possession.

Cases referred to:-

(1) *Re Givan, Rees* v. *Green* [1966] 1 W.L.R. 1378.

(2) *Robinson* v. *Jenkins & Anor. Bebro Claimant* (1890) 24 Q.B.D. 275 at 278.

(3) *Sharikat Bakti & Anor. Ltd.* v. *Gurbachan Singh* [1966] 2 M.L.J. 269.

CIVIL SUIT.

T.C. Chan for the plaintiffs.

D.T. Clidero for the defendant.

Silke J. (Commissioner): Very briefly the history of the matter is that, as is well-known, the plaintiffs whom I shall call "MBF" in short, owns 51% of the shares in MAF Credit Ltd. — "MAF" for short. MBF is in liquidation.

In 1978 the defendant, to whom I shall refer as the Trustee, was given what I might term a qualifying single share in MAF by reason of his official position — as were all the other directors of MAF.

He, and they, held those shares in trust.

The original share certificate in his name, together with a signed transfer form, were both deposited with the Official Receiver in whose hands the liquidation rests.

Time passed and through some mischance which has no real relevance here the whole of the share certificate including the one in the name of the Trustee, and the signed transfer form were lost.

In the usual manner, and again I do not think I need go into this, the loss was advertised, replacement share certificates were issued and one of those certificates was, quite properly, in the name of the Trustee. The lost share certificates were cancelled and stock exchanges were informed.

Recently the possibility of an advantage sale of the shares arose. It was necessary to sell all the shares — some 15 million odd.

The Official Receiver was, as is understandable, anxious that he could make good delivery if the sale came to fruition, of the entire of the shareholding.

In parenthesis I have some doubts if the existence of one single share, held in trust, but outside the grasp

of the Official Receiver would in reality make any difference to a potential buyer. But the Official Receiver thought it better to make sure the entire shareholding was capable of being transferred.

Hence this action.

The Trustee has made it clear that in no way does he dispute that he holds this single share in trust. But he felt, as he put in an affidavit filed in interlocutory proceedings, uneasy in respect of the lost share certificate and signed transfer form. An unease which I would have thought somewhat far fetched — the single share has a miniscule value — but he did feel it.

On last Wednesday I adjourned an application for an injunction restraining the defendant from doing various things upon his giving an undertaking, which I unhesitatingly accepted, not to do any of those things: that is attend MAF shareholders meetings: transfer or dispose of his single share or exercise any rights as a shareholder of MAF.

The purpose of the adjournment was to see if a compromise suggested, as far as I am aware, for the first time in an affidavit filed in the injunction proceedings could be effected. This was that the Trustee be given an indemnity in respect of the lost single share whereupon he would sign the transfer of the new share.

The Official Receiver did not, unfortunately, see his way to the giving of such an indemnity and the matter of the injunction therefore proceeded.

I eventually adjourned the application for the injunction to the hearing of the action proper upon the defendant, through his counsel, repeating the undertakings which he had previously given — the advocate for the plaintiffs accepting such undertakings.

That left for determination an application under Order 14 of the Brunei High Court Civil Procedure Rules 1970 — that is an application for summary judgment in the following terms: —

(1) that the trust was and has been determined on August 9, 1980 (the significance of this date is that it was the date upon which a formal request was made to the Trustee by the beneficiaries of the trust to transfer the share to them);

(2) that the defendant transfer and deliver up the said one share to the plaintiffs within such time as the court may think fit.

I note that the physical share certificate 200177 is in the possession of and is being held on my order by Mr. Chan the advocate for the plaintiffs.

It is first necessary to consider whether or not the Trustee has any defence on the merits to the action. If he has a good defence then summary judgment should be refused.

The only real defence raised is that an indemnity should be given to him prior to his transfer of the share.

It is not my intention to go into the arguments advanced in favour of this proposition. It is sufficient for me to say that, while I understand if not very fully sympathise with the Trustee's request, it does not appear to me to be a good defence in law to an action to force a trustee to transfer the share he holds in trust to a beneficiary.

That does not dispose of the matter for it is Mr. Clidero's cogent argument that, in the light of the somewhat archaic wording of Order 14 rule 1 read with Order 3 rule 5 (1), (2) and (3) there cannot be summary judgment obtained for the reliefs sought here.

Order 14 of the Brunei Rules limits the application for the granting of summary judgment to reliefs sought by writs of summons specially endorsed under Order 3 rule 5.

Order 3 rule 5(3) is the only possible portion of that Order which can apply here.

That reads:

"In actions ... (3) where the plaintiff seeks to recover the possession of a specific chattel with or without a claim for the hire thereof or for damages for its detention, the Writ of Summons may at the option of the plaintiff be specially endorsed with a Statement of his claim or of the remedy of relief to which he claims to be entitled."

The points at issue are: whether or not the word "Chattel" can apply to a share certificate and whether or not "possession" means both physical and legal possession.

On the first point it is Mr. Chan's argument that a chattel is property, the share is property and therefore a chattel.

I think him to be right for "chattel" extends to any kind of personal property and thus the shares in a private company: *Re Givan, Rees* v. *Green.*[1]

While at first blush Mr. Clidero's procedural argument was an attractive one I am fortified in my view that Mr. Chan is correct as to the share certificate coming within the wording Order 3 rule 5(3) by the words of Lord Esher M.R. in *Robinson* v. *Jenkins & Anor. Bebro Claimant*[2] (the action concerned interpleader proceedings):

"The first point made in support of this (the appeal) was that the question between the claimants would be as to the right to the shares, and that such a matter is not the subject of interpleader. It is said that though the shares are choses in action they are not tangible chattels and so are not within O. LVII. This objection reads into the order the word 'tangible'. Why should we do that? I, for one, do not see why we should and I think this ground of objection is bad."

In the same case Fry L.J. at page 279 had this to say:

"The shares, which are undoubtedly the main matter in controversy, are choses in action and are registered in the name of the plaintiff and he has power and disposition over them."

And again further down the page:

"In the first place the argument that there can be no interpleader in respect of choses in action is untenable because the first Rule of Order LVII gives relief not only in respect of any debt money or goods but also in respect of chattels. This is one of the widest words known to law in its relation to personal property."

In our rules provisions are made in the preceding portions of Order 3 rule 5 for a variety of special endorsements: Sub-rule (3) is specific as to chattels

— and without the word "tangible". Adopting, with respect, the words of Fry L.J., this is one of the widest words known to law in its relation to personal property and I would hold that it includes shares.

In the Malaysian jurisdiction I note that in *Sharikat Bakti & Anor. Ltd.* v. *Gurbachan Singh*[3] — which was a claim for a declaration that the defendant was a trespasser of land and for an order to deliver up the vacant possession — Order 14 was used without any question of its appropriateness being raised by either the parties or by the court.

I find an analogy here in that the plaintiff first seeks a declaration that the trust has been determined: (in the Malaysian case that the defendant was a trespasser): and then seeks his main remedy that the defendant do transfer and deliver up the share: (in the Malaysian case an order to deliver up the vacant possession). Though I accept the analogy is not an entirely true one.

While physically the share certificate is in the hands of the plaintiffs' advocate it is useless for the plaintiffs' purpose without the transfer being made. In all these circumstances I would hold possession in the Order includes legal possession.

I would therefore grant in a summary fashion an Order in terms of paragraphs (1) and (2) of the summons — limiting the time to 3 days.

This in effect is what the action is all about, and seems to me to put an end to further proceedings they being unnecessary. That is of course subject to any appeal against this ruling.

I shall hear the parties as to costs and then in the light of the publicity already given to this action adjourn the formal making of the Orders into Open Court — giving a truncated version of this ruling.

[Note: Having heard Counsel the Commissioner made no order as to costs on either the injunction application or the O. 14 proceedings.

The transfer of the single share was signed in Chambers before the matter was adjourned into Open Court.]

Order accordingly.

Solicitors: *Choo, Chan & Wong; Hilborne, Clidero & Co.*